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Published in:
Utrecht Law Review

DOI:
[10.18352/ulr.236](https://doi.org/10.18352/ulr.236)

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
2013

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):

Marseille, A. T., & Boekema, I. M. (2013). Administrative Decision-Making in Reaction to a Court Judgement. *Utrecht Law Review*, 9(3), 51-61. <https://doi.org/10.18352/ulr.236>

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This article is published in a peer-reviewed section of the Utrecht Law Review

Administrative Decision-Making in Reaction to a Court Judgment Can the Administrative Judge Guide the Decision-Making Process?

A.T. Marseille
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1. Introduction

Citizens participating in proceedings typically assume that a judgment will bring them certainty with regard to their legal position. This is generally the case in proceedings in private law and criminal law. A judgment in criminal law either leads to a sanction or to the accused being acquitted. In private law adjudication, a judge has to decide which of two competing claims to sustain. In administrative law, however, a judgment does not always bring citizens the certainty they would have wished for. In Germany, for example, it is not always possible *die Sache Spruchreif zu machen*;¹ in the Netherlands it is not always possible to determine that the judgment of the court shall take the place of the annulled decision.²

Take, for instance, the case of a company that has been denied a permit needed for its day-to-day operations by a municipality. The company then decides to appeal to an administrative court of first instance. In case the appeal is dismissed and an appeal to a higher court is not possible, the company has certainty concerning its legal position. In the event the appeal succeeds, the administrative judge may annul the decision in which the permit was denied. The administrative judge may not, however, grant the permit him/herself. After the judgment has been rendered, the municipality should reach a new decision, in which the judgment is taken into account. In conclusion, we can say that a successful appeal at an administrative court almost never settles the dispute at hand.³

The question, then, is what happens next. Does the administrative authority succeed in taking a new decision in time? And when that new decision is taken, how do parties to the dispute react? Will they accept that new decision, or will they appeal once again? Every time an administrative judge annuls a

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1 F. Hufen, *Verwaltungsprozessrecht*, 2011, pp. 421-425.

2 R. Seerden & D. Wenders, 'Administrative Law in the Netherlands', in R. Seerden (ed.), *Administrative Law of the European Union, its Member States and the United States*, 2012, pp. 148-152.

3 Exceptions to this general rule are laid down in the General Administrative Law Act (*Algemene wet bestuursrecht, Awb*). If the appeal is successful, the administrative judge can nevertheless leave the legal consequences of the administrative decision intact (cf. Art. 8:72(3)(a) Awb). If the administrative judge opts for this outcome, the parties to a dispute have certainty concerning their legal position. Certainty is also given if the administrative court declares an appeal well founded and rules that its judgment shall take the place of the annulled decision (cf. Art. 8:72(3)(b) Awb). Furthermore, parties to the dispute have certainty with regard to their legal position in case the court offers the administrative authority a certain amount of time during the proceedings to correct any mistakes made in the decision. In all of the above, no new decision is needed after the judgment has been rendered. More such exceptions exist in Dutch law, depending on the specific legal rules involved. They will not be dealt exhaustively in the context of this contribution.

decision, he or she will be curious as to the end of the conflict. This can bring the judge to investigate whether he or she can ensure that a new decision is reached by the administrative authority as quickly as possible and whether he or she can ensure that the new decision does not lead to court proceedings for a second time.

Unfortunately, we know little of the influence of a judgment on the subsequent decision-making process by an administrative authority. For instance, in some cases a new decision is taken in just a few days while other decisions are taken only after some years have gone by. Some administrative decisions are frequently challenged in court for a second time while others remain undisputed. This contribution attempts to answer these and other questions, with a focus on one of the Dutch administrative courts: the Administrative Jurisdiction Division of the Council of State (hereafter: Council of State).⁴ The study aims to answer three questions:

1. Can the Council of State ensure, by its treatment of a case, that if the administrative authority takes a new decision, this decision is not challenged before the Council of State for a second time?
2. How does the nature of the dispute influence the extent to which new decisions are disputed before the Council of State?
3. Which contextual factors influence the extent to which new decisions are challenged before the Council of State?

The contribution is structured as follows. Section 2 enumerates hypotheses on the relationship between a judgment and subsequent administrative decision-making. The third section describes the research design. Section 4 outlines the results related to the first and the second research question, while Section 5 describes the findings for the third research question. The sixth section contains a conclusion and the seventh a discussion of the findings.

2. Theoretical model: assumptions

With an eye on the literature on the course of judicial disputes, three main types of factors emerge that could influence the course of disputes after a judgment has been rendered. The first category contains factors related to the content of the judgment. For instance, it can be assumed that a dispute will not be taken to court for a second time if the judge gives an opinion on all of the grounds for appeal.⁵ Secondly, it can be hypothesized that a dispute will be taken to court for a second time less frequently in case the court annuls the decision on substantive rather than on formal grounds.⁶ Moreover, if the judgment of the court does not address the core of the dispute, it can be assumed that citizens will more frequently initiate proceedings for a second time.⁷ Furthermore, in case the judgment contains a ruling on the relevant facts, thereby making further discussion impossible, we can assume that new proceedings are less likely to be initiated.⁸ Finally, if the judgment contains instructions to the administrative authority for the decision-making process, it can be assumed that a decision taken on the basis of these instructions will not be disputed very lightly.⁹

A second category of factors is related to the nature of the dispute. Firstly, the nature and content of the decision itself influence the extent to which the decision is disputed in court. Secondly, the chance that a decision is challenged increases with the number of interested persons involved.¹⁰ Finally, the

4 The present study was undertaken at the request of the Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State, ABRvS*). The Council of State wanted to investigate whether they could prevent cases in which litigation takes place for years on end. The current research could provide an insight into the factors driving repeated litigation.

5 B.J. Schueller, J.K. Drewes et al., *Definitieve geschilbeslechting door de rechter*, 2007.

6 J.E.M. Polak, *Effectieve bestuursrechtspraak*, 2000.

7 A. van der Veer, *Slagvaardige geschilbeslechting in het bestuursrecht*, 2011.

8 B.J. Schueller, J.K. Drewes et al., *Definitieve geschilbeslechting door de rechter*, 2007. A substantive number of cases do not contain a ruling on the facts, as is concluded in A.T. Marseille, *Effectiviteit van bestuursrechtspraak*, 2004, p. 26 and T. Barkhuysen, L.J.A. Damen et al., *Feitenvaststelling in beroep*, 2007.

9 D.A. Verburg, 'Finale geschilbeslechting en haar stiefkind, de "aangeklede" opdracht om een nieuw besluit te nemen', 2010 *JBplus*, pp. 153-178; J.C.A. de Poorter & K.J. de Graaf, *Doel en functie van de bestuursrechtspraak: een blik op de toekomst*, 2011, pp. 148-152.

10 B.J. Schueller, *Vernietigen en opnieuw voorzien. Over het vernietigen van besluiten en beslechten van geschillen*, 1994.

background characteristics of the interested persons involved influence their willingness to start new proceedings.

A third category is comprised of contextual factors. Contextual in this sense denotes all factors not related to either the judgment or to the nature of the dispute, but to the legal, political and factual context in which the new decision is taken. Firstly, the course of a dispute is influenced by the degree to which the administrative authority wants the new decision to resemble the annulled one. If the administrative authority is inclined to reach a situation which accommodates the parties involved, the chances are higher that a dispute will be settled.¹¹ Secondly, we can hypothesize that if an administrative authority has taken a specific stance in the annulled decision, it may find it difficult to abandon this position. Thirdly, at the moment the new decision is taken, the facts of the dispute and/or the applicable rules may have undergone changes.¹² Administrative authorities are required to take such changes into account when taking a new decision.¹³ It can be questioned, however, to which degree such changes are indeed taken into account as administrative authorities have only limited resources and should take new decisions in an efficient and timely manner.

3. Data collection

The research is comprised of two parts: an analysis of 125 judgments by the Council of State combined with supplementary data and in-depth interviews with representatives of administrative authorities.

3.1. Analysis of judgments and supplementary data

Data was gathered in order to investigate the effects of the nature of the dispute and its treatment by the court on the development of a dispute. Administrative authorities were asked to indicate whether in a particular conflict legal proceedings concerning the same matter had arisen more than once. The gathering of this data allowed the researchers to compare two distinct groups of cases:

1. Cases that, after a judgment had been rendered and a new decision was taken, led to second proceedings before the Council of State.
2. Cases that, after the rendering of a judgment, did not lead to second proceedings before the Council of State.

An analysis of the judgments in these cases was carried out in order to answer the first two research questions. In other words, the study sought to find which characteristics of the court treatment and which characteristics of the dispute influence whether a new decision is either challenged before the Council of State once again or remains unchallenged. The judgments included in the research were all rendered by the Council of State in its capacity as the one and only body that hears appeals concerning zoning plans, environmental permits and a range of other legal decisions.

The disadvantage of this choice is that findings from the study may not hold true for other administrative law disputes. The interests at stake in disputes involving environmental permits are different from those at stake in, for example, refugee and asylum law. Another difference between the disputes included in the research and other administrative law disputes is that the Council of State often hears cases in which more than two parties are involved. In most conflicts pertaining to administrative law, only two parties are involved in a dispute.

The gathering of the data for the present study started with a random selection by the Council of State of 59 cases from the period 2004-2011 in which proceedings arose more than once.¹⁴ Four of

11 B.J. Schueler, J.K. Drewes et al., *Definitieve geschilbeslechting door de rechter*, 2007. The degree of flexibility on the part of the administrative authority is influenced by the perceived risk of claims for damages in case a new decision has negative effects on one of the interested parties.

12 A. van der Veer, *Slagvaardige geschilbeslechting in het bestuursrecht*, 2011; N. Verheij, 'Tussen toen en nu', 2003 *JBplus*, pp. 26-47.

13 Art. 3:2 Awb.

14 The Jurisdiction Division of the Council of State is both a court of first instance and a court of appeal. For the present study, only cases dealt with at first instance were selected.

these selected cases were excluded for various technical reasons, leaving 55 cases. The 59 case numbers obtained from the Council of State were then used as a starting point to add other cases to the sample. For every case selected by the Council of State, the researchers selected two other cases: the first prior case number and the first subsequent case number.¹⁵ After this procedure was carried out, the research team was left with 118 cases that could be added to the existing sample.¹⁶

The outcome of the conflict in these 118 cases was retrieved by browsing official websites¹⁷ and by requiring information from the administrative authorities involved. It appeared possible to retrieve the outcome for nearly all of the cases in the sample. Although the judgment in all cases in the sample required that a new decision was taken, such a decision was only taken in 70 cases. Of these 70 cases, 51 new decisions remained unchallenged, 19 were again challenged at the Council of State.

What first catches the eye about these figures is the large portion of cases in which no new decision was taken by the administrative authority, although this was required by the judgment. From the information given by administrative authorities it was possible to find an explanation for these figures. In 15 cases a new decision was no longer necessary as factual circumstances or legal rules had changed, making a new decision undesirable. In 26 cases the administrative authority did not take a new decision, although this was required. For the remaining 7 cases the researchers were unable to retrieve the development of the dispute after the judgment had been rendered. Table 1 presents an overview of the cases in the sample.

Table 1 Cases selected and included in the sample

	Cases selected by Council of State	Cases gathered by researchers	Cases in sample
New decision taken: unchallenged		51	51
New decision taken: challenged	55	19	74
No new decision (although necessary)		26	
No new decision (not necessary)		15	
Unknown		7	
Total	55	118	125

As is shown in the table above, the present study made use of 125 judgments; 51 of these concerned a dispute in which a new decision was not challenged in court while 74 concerned a dispute that was taken to court. It should be emphasized that these figures are from a stratified sample and do not reflect the real proportion of the new decisions that were either challenged or remained unchallenged. On the basis of the findings from the present study, we can hypothesize that generally 27% (19 out of 70) of new decisions are challenged in court for a second time. In the tables in the next section this is taken into account by adjusting the percentages to reflect this proportion.

3.2. Interviews with representatives of administrative authorities

In order to answer the third research question, more insight was needed into the contextual factors that influence the extent to which a new decision is challenged in court for a second time. As was clarified earlier, contextual in this sense refers to all factors related to the context in which the new decision is taken. Obviously, such data is not available in the judgment itself. For this reason, in-depth interviews

15 Every case pending before the Council of State is given a case number; cases are numbered chronologically. The case number of the oldest case was used as a starting point for the data collection. The selection of cases by the research team was carried out online, as the Council of State publishes all judgments online.

16 The research team did not select any cases in which the Council of State had chosen to annul the decision but left the legal consequences of the annulled decision fully intact (cf. Art. 8:72(3)(a) Awb). Cases in which the Council of State annulled a decision and ruled that its judgment took the place of the annulled decision (cf. Art. 8:72(3)(b) Awb) were included. In this scenario, the dispute did not necessarily come to an end. In case of an infrastructural project, for example, an annulled decision usually means that a new plan has to be made by the administrative authority for the infrastructural project to be completed. This usually means that a new decision should be taken that can, again, be challenged before the court.

17 In the Netherlands, administrative bodies are currently required to publish a large part of their decisions on a governmental website that exists solely for this purpose.

were carried out. These investigated the course of events in 27 cases in which the Council of State had rendered one or more judgments that obliged the administrative authority to take a new decision.

The interviews were held with civil servants at administrative authorities that had been involved in a case in which the Council of State had annulled a decision at first instance and a new decision had been taken.¹⁸ The researchers tried to allow the interviews to illustrate the full range of conflicts that the Council of State deals with at first instance. Different administrative authorities were involved in the interviews, including municipalities, provinces and water boards.

4. Results of the first substudy: the nature of a dispute and its treatment by the court as a factor influencing the course of a dispute

4.1. Introduction

The first research question of this study aims to elucidate how the Council of State can ascertain, by means of its judgment, that the administrative authority takes a new decision that remains unchallenged in court. We sought an answer to this question on the basis of the cases included in the sample. Typically, judgments offer information on at least two different aspects of a case:

1. First of all, judgments offer an insight into aspects of a dispute such as the nature of the decision, the type of administrative authority involved, the number of parties involved (i.e. a conflict between two or three parties) and the number of claimants.
2. Secondly, the judgment offers information on the treatment by a court. This information includes the number of judges involved,¹⁹ the obtaining of an expert opinion by the court, the duration of the proceedings, the number of grounds of appeal decided upon by the court and the number of aspects on which the decision was found to be unlawful.

4.2. Aspects of the dispute

When we investigate the influence of the nature of a dispute on its development, a few observations are especially striking. Contrary to our expectations, the type of administrative authority involved in the conflict did not influence the development of the dispute. The nature of the administrative decision does play an important role, as can be seen in the table below.

Table 2 Nature of the administrative decision

	Zoning plan	Environmental permit	Other	Total
New decision challenged	42%	22%	26%	27%
New decision unchallenged	58%	78%	74%	73%
Total	100%	100%	100%	100%
N	46	40	39	125

Chi-square = 8.343, $p = .039$ ²⁰

The table shows the percentage of new decisions that are challenged in court for a second time for three types of decisions: zoning plans, environmental permits and other types of decisions (such as enforcement decisions). From these figures, it follows that decisions regarding zoning plans are significantly more often challenged in court a second time. The number of parties to the dispute (two or three) does not

18 As the sample is relatively small, this part of the study should be seen as exploratory. The interviews were semi-structured in nature.

19 In the Netherlands, a judgment is generally rendered by either one or by three judges.

20 The strength of a causal relationship can be measured using Kendall's Tau. For this measure, the relationship is stronger the closer Kendall's tau is to either 1 or -1. The p-value tells us something about the chance that the relationship found is caused by coincidence in the sample. If $p < 0.1$, the chance that the results of the study are due to coincidence is smaller than 10%. In the same vein, if $p < 0.05$, this chance is smaller than 5% and if $p < 0.01$, this chance is smaller than 1%. The chi-square test is used for variables that have no order (known as nominal variables).

influence the extent to which decisions are taken to court. The number of claimants, however, does influence the development of the dispute.

Table 3 Number of claimants

	One or two	More than two	Total
New decision challenged	20%	42%	27%
New decision unchallenged	80%	58%	73%
Total	100%	100%	100%
N	73	52	125

Tau-b = .238, p = .005

From the table above, one can derive that in cases with more than two claimants, the chance that the new decision is again challenged before the Council of State is significantly higher than in proceedings with one or two claimants. The difference is statistically significant.

4.3. Treatment by the Council of State

The treatment of the case by the Council of State had no relationship at all to the development of the dispute. In other words: it did not matter whether the Council of State ruled by means of three or by means of one judge, whether it asked for an expert opinion, whether parties to the conflict attended the hearing or how long the proceedings lasted. These factors do not influence the extent to which a new decision by an administrative authority is taken to the Council of State for a second time.

With regard to the contents of the judgment, one factor that deserves special attention is the number of grounds of appeal that have been decided upon by the Council of State. An administrative court in the Netherlands can choose not to deal with all grounds of appeal. If a decision is found to be unlawful on one aspect, the grounds of appeal dealing with other aspects can be left aside. Judges frequently do not deal with all grounds of appeal as this saves time; on the other hand, dealing with all grounds of appeal provides the parties to the conflict with more certainty concerning their legal position. It can be assumed that if a judge who annuls the contested decision has decided upon all grounds of appeal, the parties can better predict the potential outcome of any second proceedings. This, in turn, can be expected to lower the number of decisions challenged in court for a second time. However, contrary to our expectations, no relationship was found between the number of the grounds of appeal that were decided upon and the subsequent development of the dispute.

Although a direct effect between the number of grounds decided upon and the course of the dispute was not found, an indirect effect might be possible. It might be hypothesized that the chances of success of a second appeal are lower when the decision challenged is based on a judgment in which all grounds of appeal have been dealt with. In such a situation, the administrative authority will know very precisely how it should shape the new decision in order for it to survive second proceedings. However, no evidence for such an indirect effect has been found in the present study. Our study did establish a relationship between the number of aspects on which the decision was found to be unlawful and the course of the dispute after the judgment.

Table 4 Number of aspects on which a decision is found to be unlawful

	One	More than one	Total
New decision challenged	20%	42%	27%
New decision unchallenged	80%	58%	73%
Total	100%	100%	100%
N	74	51	125

Tau-b = .264; p = .00

The table above shows that when a decision is annulled by the Council of State on more than one aspect, it is more likely that the new decision taken by the administrative authority will be challenged a second time.

One can hypothesize that the content of the new decision should influence the extent to which that decision is contested at the Council of State. In theory, at least, citizens should be inclined to appeal unfavourable decisions rather than favourable ones. However, of the 125 cases selected, more than half of them consisted of disputes involving two (groups of) citizens with opposing interests. For these cases, the content of the new decision would always disappoint one party to the conflict.²¹

Occasionally, a judgment by the Council of State specifies how the new decision should be reached (e.g. it stipulates the need to consider the input of the claimants, the need for further research by the administrative authority or the need for an expert opinion). In case the judgment contains such a requirement, we presumed that the new decision of the administrative authority will be challenged in court less frequently. Only in six of the 121 judgments which we investigated did the Council of State specify how the new decision should be reached. As a consequence, we could not test our presumption. However, it is remarkable that in five of these six cases – contrary to what we expected – the new decision was challenged. A possible explanation for this is that the Council of State only specifies how the new decision should be reached when it expects that the decision-making process will be difficult.

4.4. Summary

From the figures presented above, we can infer that there is no connection between the way in which a case is dealt with by the Council of State and the subsequent development of the dispute. Contrary to expectations, it does not matter whether the Council of State deals with all of the grounds of appeal. If the judgment offers the parties to a dispute more legal certainty, this does not necessarily mean that the new decision is accepted more often by those concerned.

In addition to these findings, there is no evidence that when the Council of State has decided on all grounds of appeal, a new decision based on the judgment is annulled less frequently than when the Council of State has not dealt with all grounds of appeal. A judgment dealing with all grounds of appeal therefore does not result in a lower rate of proceedings initiated for a second time at the same court.

The present study did find a significant relationship between the nature of the contested decision and the development of a dispute. More specifically, if the contested decision concerned was a zoning plan, it was more likely that the new decision taken by the administrative authority would not be accepted by the parties concerned. The reason for this relationship might be straightforward: zoning plans are typically a collection of many individual decisions concerning different interested parties. This implies that if a zoning plan is annulled, it will usually be declared unlawful on several aspects. The administrative authority will therefore have to adjust several parts of the zoning plan in its new decision, which increases the possibility that an interested party disagrees with some feature of that new decision.

Finally, a significant relationship was found between the number of claimants and the course of a dispute after a new decision is taken. The higher the number of claimants involved in the first court proceedings, the greater the chances are that one of these will initiate second court proceedings when this becomes possible.

5. Results of the second substudy: contextual factors influencing the course of a dispute

5.1. Introduction

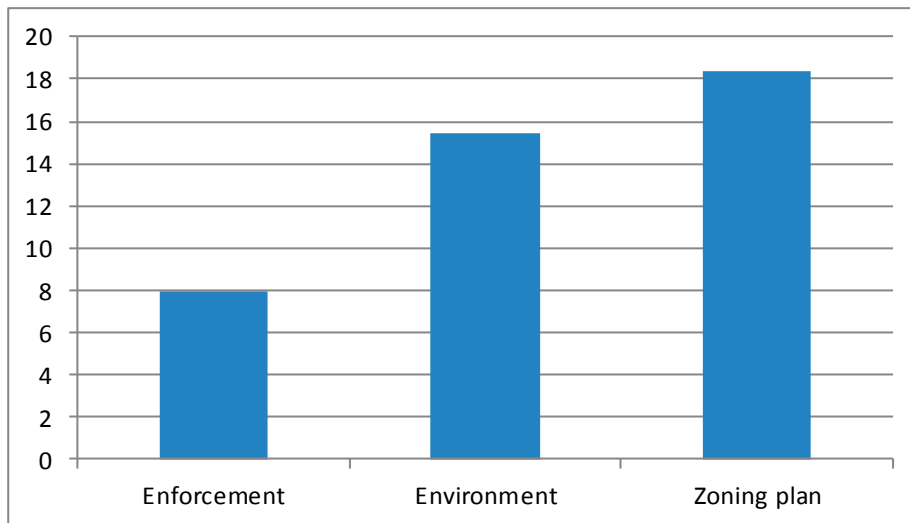
As was explicated earlier, external factors refer to the legal, factual and organisational context in which the new decision is taken. To get a grip on these factors, it was necessary to clarify the decision-making process of administrative authorities. To this end, data was gathered in two ways:

21 Of the 125 cases, 73 involved three or more parties to the conflict, while 52 involved only two parties. For these 52 cases, one would assume that favourable decisions would be disputed less frequently than unfavourable ones. We tried to find out whether the new decision in these cases was positive or negative for interested parties but this proved impossible for most of these cases.

1. For each of the 125 cases in the sample, data was collected on the amount of time the administrative authority used to reach a new decision.²²
2. In-depth interviews were held with 27 representatives of administrative authorities that participated in decision-making processes. In these interviews, representatives were asked which factors helped or hindered them in taking a new, lawful decision. Moreover, representatives were asked whether a new decision had been challenged and why this was the case. Moreover, representatives were asked which contextual factors influenced the course of a dispute after a court judgment had been rendered.

In this section the results of this substudy are presented. To begin with, let us take a look at the time that the new decision by the administrative authority took. It proved possible to collect data in 107 out of the 125 cases in the sample. The results are shown in the figure below.

Figure 1 Number of months spent on decision-making



On average, a new decision took more than 16 months (495 days). Large differences exist between different categories of decisions. As we saw earlier, the sample included cases concerning environmental permits, cases concerning zoning plans and other types of cases. The cases included in this last category were heterogeneous, ranging from decisions on educational law to decisions concerning mining. Administrative enforcement cases were the largest distinct group in this category. In the 12 administrative enforcement cases included in the sample, the competent administrative authority, usually a municipality, takes a new decision in 8 months (242 days). A new decision concerning an environmental permit takes 15 months (467 days; this figure being based on 40 cases), while a new decision in a zoning plan takes more than a year and a half to complete (559 days; this figure being based on 46 cases).

These findings give rise to the question why a new decision takes on average more than a year. More specifically, the researchers wanted to investigate whether administrative authorities perceive the content of the judgment to hinder timely decision-making. If this is the case, the Council of State could significantly improve the decision-making process at administrative authorities by altering its judgments.

Based on the in-depth interviews, we observed basically four reasons why the decision-making process may proceed slowly. Most notably, most respondents did not mention the contents of the judgment of the Council of State as a cause for dawdling decision-making.

²² Data was collected by referring to official websites of administrative bodies and the central government. In case no reliable data could be found on the internet, the data was requested from the administrative bodies concerned.

5.2. Complexity

The first, most straightforward, reason why decision-making procedures often take months is that cases can be quite complex. Take, for example, a case concerning a permit for the expansion of Eelde Airport in the north of the Netherlands, near to a residential area. The expansion of the airport has been under debate since the idea was launched. The Council of State has delivered three judgments concerning this matter; as a result of the litigation the project was delayed by several years.²³ In its first two judgments, the Council of State ruled that the administrative authority concerned (the Ministry of Infrastructure and the Environment) should take a new decision. The two proceedings as well as the ensuing decision-making processes lasted for several years.

The length of the process as a whole was caused by the nature of the defects in the decision that led to its annulment. In its first judgment, dating from 2003, the Council of State ordered the Ministry to alter certain provisions in a statutory regulation. The second proceedings at the Council of State lasted for two years, as the Council deemed it necessary to ask the European Commission for clarification on the application of state aid rules. When this advice had been given, the Council of State decided in 2008 that the second decision should be quashed. The Ministry then had to notify the project under the state aid rules to the European Commission. After more than 18 months, the Ministry took a third decision on the project. This decision was again appealed at the Council of State; the proceedings took two years. In 2012 the Council of State rendered a judgment that allowed the expansion of the airport to commence.

5.3. Passivity

Not every decision appealed at the Council of State concerns a complex case in which there is a large project and the applicable law is unclear. In some cases, an annulled decision can be adjusted on a minor aspect; it should then be possible for the administrative authority to reach a new decision in good time. One of the interviews concerned an environmental permit issued for a petrol station in Franeker, close to the Wadden Sea. The licensee disagreed with specific provisions contained in the permit and lodged an appeal against the decision. The Council of State quashed the decision as the municipality had based the permit on the wrong statutory provisions; it was based on statutory provisions applying to new installations, whereas the petrol station was an existing installation.²⁴ The civil servant interviewed pointed out that the municipality knew exactly which steps had to be taken after the judgment. It could take basically the same decision, only slightly adjusting its reasoning. Nevertheless, a new decision was not taken until two years had passed by.

We might wonder whether the Council of State could prevent such scenarios by setting a time limit for the new decision. From another interview, however, it follows that such a term does not necessarily stimulate timely decision-making. The case concerned a permit for a temporary parking ground belonging to a hospital in Doetinchem, near to the German border.²⁵ The decision in which the permit was issued was annulled by the Council of State because the municipality did not investigate carefully enough whether the restrictions laid down in the permit were stringent enough to ensure that the parking ground did not cause inconvenience to neighbours. In this case as well, the municipality knew clearly what had to be done after the judgment. Only small adjustments were necessary to take a new decision. However, the municipality of Doetinchem did not succeed in reaching a new decision within the three-month time limit specified by the Council of State. The millstones of government grind slowly, as one of the civil servants who participated in the interviews put it.

5.4. Reflection

In some cases, the judgment led parties to the dispute to expect that a new decision could be taken relatively easily. However, on reflection it turned out that the consequences of the judgment were more far-reaching than appeared at first glance. An example is provided by a case concerning an environmental

23 ABRvS 3 December 2003, *LJN* AN9219; ABRvS 11 June 2008, *LJN* BD3598; ABRvS 15 February 2012, *LJN* BV5092.

24 ABRvS 18 July 2007, *LJN* BA9836.

25 ABRvS 12 April 2006, *LJN* AW1292.

permit for a barn on a livestock farm in Best, in the south of the Netherlands.²⁶ A neighbour had entered an appeal against the decision. The Council of State quashed the decision on a minor aspect. The municipality could have easily decided to take a new decision on the farmer's application for the permit, containing only slight adjustments to its reasoning. However, the farmer decided to start the application process for the permit anew.

The farmer opted for this course of action as the circumstances had changed since the time the annulled decision was taken. The farmer concerned now held different opinions on how he could best exploit his farm. Moreover, he was now more willing to accommodate the wishes of his neighbour, as he wanted by all means to prevent another appeal at the Council of State. The farmer therefore chose to adjust the design and location of the barn according to the wishes of his neighbour. As a consequence, it took more than a year to take a new decision.

5.5. Unclear judgment

Remarkably, only one of the 27 administrative authorities interviewed mentioned the lack of clarity in the judgment as the main reason for slow decision-making. This case concerned a zoning plan for a business park in Hoogetveen, in the east of the Netherlands. The original decision dated from the spring of 2002. The last judgment rendered by the Council of State, that ended litigation on the business park, dated from the summer of 2011. In this period, the Council of State rendered two other judgments.²⁷

From the interview held with three civil servants working at the municipality, it followed that the municipality found it difficult to extract from the judgments what adjustments had to be made to the zoning plan for a new, lawful decision to be taken. This was one of the main reasons why the ensuing decision-making process took years to complete. The civil servants indicated that the process had been one of 'trial and error' in which the municipality tried several alternatives to ensure that the project could be realized as soon as possible.

6. Conclusion

The present study was undertaken to provide more insight into the factors that influence whether a new decision, taken by an administrative authority in response to a court judgment, is challenged in court on a second occasion. At the outset of this article, we identified three types of factors that might play a part: the treatment of a case by the court, the nature of a dispute and contextual factors.

When the research data is examined, no evidence is found of a relationship between the treatment of a case by the court and the development of a dispute after the judgment has been rendered.

The study did find a relationship between the nature of a dispute and the course of the dispute after the court judgment. Moreover, a significant relationship was found between the nature of the contested decision and the development of the dispute. More specifically, if the contested decision concerned was a zoning plan it was more likely that the new decision of the administrative authority would not be accepted by the parties concerned. The reason for this relationship might be that zoning plans are typically a collection of many individual decisions concerning different individuals and companies. Furthermore, a significant relationship was found between the number of claimants and the course of a dispute. The higher the number of claimants involved in the first court proceedings, the greater the chance that one of these will start second proceedings if possible.

The third category of factors influencing the course of a dispute concerns external circumstances. It was found that a dispute frequently does not develop as could be expected based on the nature of the dispute and its treatment by the court. For example, in some cases included in the study the individual that initiated proceedings moved to another municipality. In other cases the company holding the permit that was the object of litigation decided to abandon its activities or to relocate them. In some cases, the rules on which the annulled decision was based were changed after the judgment. The administrative authority concerned is then obliged to take such changes into account. In a considerable number of cases,

26 ABRvS 17 May 2006, *LJN* AX2068; ABRvS 11 June 2008, *LJN* BO3588.

27 ABRvS 28 April 2004, *LJN* AO8424; ABRvS 30 January 2008, *LJN* BC3052; ABRvS 20 July 2011, *LJN* BR2271.

the annulment of the decision in which a licence was granted led the administrative authority and the licensee to reconsider the activity made possible by the licence. Such reconsideration could result in the licensee agreeing to make concessions to interested parties, even if this does not seem necessary on the basis of the judgment. Such concessions are usually made only if licensees thereby obtain certainty that proceedings will not be initiated on a second occasion.

7. Discussion

At the outset of this contribution, we saw that when an administrative judge annuls a decision, he or she will examine whether it is possible to ensure that a new decision is made in a timely fashion. Furthermore, the judge will investigate whether he or she can ensure that the new decision does not lead to second court proceedings.

We saw that the Dutch administrative judge is rather limited in his or her choice of instruments to ascertain that no second appeal is lodged against the new decision. One of the available instruments is the possibility to set a term for the new decision. Such a term is not binding in the sense that there are no sanctions if the administrative authority exceeds the limit.²⁸

The results of the study show that administrative authorities frequently do not decide within the time limit imposed by the judge. A possible solution might be found in a time limit that is more tailored to the specific aspects of a case. The study found that a term imposed more or less automatically does not provide the desired timeliness of decision-making. A more fruitful approach might be that if it is clear that the decision will be annulled, the administrative judge initiates a discussion with the parties concerned. Ideally, this discussion should lead to consensus about how much time the decision-making process should take.

Another remarkable finding is that the treatment of a case by a court does not, generally speaking, influence whether the new decision of the administrative authority is challenged before the Council of State for a second time. Contrary to expectations, the number of grounds that the court decided upon in the judgment did not in any way influence the course of a conflict after the judgment. This is not to say that the parties did not appreciate the legal certainty they obtained in cases where the court chose to deal with all of the grounds of appeal. Yet the findings may suggest that courts should be selective when deciding whether or not all of the grounds of appeal should be decided upon.

We can conclude by stating that the judgments of administrative courts in the Netherlands only marginally influence the course of disputes after they have given their judgment. Ultimately, administrative authorities and interested parties themselves are in charge of a conflict and it is they who should assume the responsibility for a timely and lawful settlement of the dispute. ¶

28 Cf. Art. 8:72(4)(b) Awb. Art. 4:17 Awb stipulates an exception to this rule: if the administrative authority exceeds the time limit, interested parties can institute proceedings.